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Emerging Issue: Coastal and Marine Spatial Planning

Rhode Island's Ocean Special Area Management Plan:

Leading the Way for the Nation

Grover Fugate*

The Rhode Island Ocean Special Area Management Plan (OSAMP) had its genesis in early efforts of the coastal

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management programs from New York, Connecticut, Rhode Island and Massachusetts during 2005 and 2006, regarding a possible interstate special area management plan. This plan was to be for the sounds along the shoreline of the northeastern United States. A Special Area Management Plan (SAMP) is a tool that is available through the federal Coastal Zone Management Act (CZMA) that balances both economic development with environmental protection. SAMPs are intended to provide for a greater level of specificity in policy development, and thus coordination between levels of government, thereby adding certainty to the decision-making process. The issues of energy and coastal hazards, precipitated by climate change, were in the forefront of this effort. Although this endeavor never materialized, it did bring home one glaring lesson—we knew little about the uses and the system itself. Given this, it was impossible for us to understand the pressures the system was under and the changes it was going through.

In the fall of 2007, the Rhode Island Coastal Resources Management Council (CRMC) was approached by the Governor's Energy Policy Advisor about a possible utility grade (100 megawatts or greater) wind farm off the south end of Block Island. The Energy Office in 2005 had commissioned a study to look at renewable energy generation in Rhode Island and the feasibility of various technologies and locations capable of supporting the development of new renewable energy in the Ocean State. The study concluded that the only feasible method for the state to meet the legislative goal of sixteen percent use of renewable energy by 2019, was to move into the offshore environment. The study also concluded that wind energy was the only off-the-shelf technology that was currently feasible, given our resource capabilities. It was indicated to the Energy Office that to select the site and immediately do an environmental impact statement (EIS) for the location, was going to be very problematic. Given what we knew about that location, which was very little, we knew there were going to be severe constraints, but even then, we did not know the magnitude of those constraints for that site (i.e., extensive Department of Defense concerns). We convinced the Energy Office that a planning framework was the best alternative. The Rhode Island CRMC has a long history of marine spatial planning and developed its first statewide marine spatial plan, complete with

water-based zoning, in 1983. From our long history of marine planning, we knew that the information we were going to have to gather for a siting effort would be the same information we would need for a marine spatial planning effort for Rhode Island's portion of the sounds. The scales and level of details were going to vary for these two efforts, but much of the information needed was the same.

We were given one week to develop a work plan, study, outline, and budget. In other words, we were given one week to conceptually develop, not only a study on wind farm siting in both federal and state waters, but also a vision of what the management framework would look like at the end of this process. This was also a period of tremendous changes. The Mineral Management Service (MMS as it was called at the time, later the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)) was developing the regulations for offshore wind energy. Whatever we developed in the way of a plan and siting process was going to have to dovetail with this new regulatory regime. Also at the time, Cape Wind was still going through the leasing process with MMS. This project had just transferred primary jurisdiction from the Army Corps of Engineers (ACOE) to MMS. There was also uncertainty and tension between MMS and the Federal Energy Regulatory Commission (FERC) on permitting renewable energy in the Outer Continental Shelf (OCS). In addition, there was the potential for projects to straddle state and federal waters, mixing jurisdictional issues. Shadowing this backdrop, was the fact that this country had little to no experience in permitting major renewable energy projects in the marine environment.

It was decided the CRMC would partner with the University of Rhode Island (URI) and Roger Williams University School of Law to develop the plan, but ultimately the CRMC was to be the project manager, as this partnership was to result in a regulatory document. This partnership had been used many times in the past for developing other Special Area Management Plans in Rhode Island, and so it was a process with which all parties were comfortable. A senior management team was formed (Grover Fugate, project manager; Dr. Malcolm Spaulding, Dr. Kate Moran, and Dennis Nixon, senior advisors; and Jen McCann and Sam DeBow, principal investigators). We turned in our first proposal

within the one week allotted to us. The original budget for the necessary studies and the plan was $6.5 million. It should be noted when looking at the final budget amount that this was really two projects in one. It was an ecosystem-based marine spatial planning process, and a siting study for wind farms in state and federal waters. We were told to revise the budget and work task to bring the overall budget to $3.2 million. This was still a tenfold decease in the overall budget compared to what had been spent on Cape Wind at the time. We revised the budget and resubmitted it, and it would be several months before the Governor's Office made a final decision to authorize the study and plan. Ultimately, due to the early success of the plan, funding was increased to nearly $8 million.

The plan was given the go ahead to start officially in August 2008, and in September 2008 we immediately put together a comprehensive stakeholder panel to help develop the plan. Before the study was authorized, we also reached out to the ACOE and MMS to partner in the study. ACOE was the federal agency with primary jurisdiction in state waters and MMS was the primary agency for wind energy leasing in federal waters. The ACOE also brought with it regional federal partners including the Environmental Protection Agency (EPA), the National Marine Fisheries Service (a division of the National Oceanic and Atmospheric Administration (NOAA)), the federal Fish and Wildlife Service (an agency within the Department of the Interior), and the U.S. Coast Guard. Once authorized, we also reached out to the Narragansett Indian Tribe, a federally recognized tribe in Rhode Island, to partner and participate in the process.

Even given all the advanced work we did to plan for the start up of the study, we were not without our issues. There were political pronouncements that led some key stakeholders to believe the OSAMP was window dressing for a deal that was already in place. In addition, given the changes occurring in the regulatory environment, which were literally day-to-day, it was a challenge to keep stakeholders informed of these dynamics. We also had to convey what, at best, was a confusing array of federal statutes, programs and projects that were underway. This had to be done in such a way that the stakeholders would know we knew what we were doing, so that they would retain in the planning

team, and ultimately so they see this as an effort worth their time that would achieve a meaningful result. This took a lot of time, communication, and trust building. Eventually, over time, we built the trust back up and were able to move forward—key in this process was transparency and honesty. The stakeholders, for instance, got any information coming out of the study before anyone else did. There was tremendous pressure at the time to give preliminary results to select groups. We did not respond to these requests and kept to our promise that stakeholders would get the information first. We were also honest, and if we did not know something or could not control the end results, we were up-front about the limitations and did not try to soft-pedal them.

There were several key attributes of the OSAMP that contributed to its ultimate success. First and foremost was partnering with the federal agencies and the tribe. It was extremely important to us as we went forward, particularly in the various study designs, that we had "federal buy-in." Having this participation and buy-in gave additional value to the planning process, as not only would this information be helpful to us in developing the plan, but ultimately it would feed into any National Environmental Protection Act (NEPA) process later on. In addition, the federal agencies often had information and data that were valuable to us in assessing everything from natural resources to marine transportation patterns.

A second key aspect that contributed to the success of the OSAMP was an involved, open, and transparent stakeholder process. The stakeholders were not there just to provide comment, but they actually helped us write the plan. At the outset of the chapter writing process, we formed three Technical Advisory Committees (TACs). We had a TAC of state agencies involved in the process, as well as a federal TAC, which included the Narragansett Indian Tribe. Also, we had a TAC where all of the members were subject area experts, and there was a separate expert TAC for each chapter. These expert TACs contained academics, NGOs, and government entities, which were familiar with each subject area. These TACs were key in providing information and ultimately ground-truthing each chapter.

It is worth describing the chapter writing process, just to show how involved the public, stakeholders and TACs were in the process. Each chapter started out with a writing team of

University Policy Analysts and Scientists who were familiar with the subject area under consideration. The writing teams would meet with stakeholders, government agencies, NGOs, academics and others, to gather as much information as they could for each subject area. This was in addition to the normal literature search that occurred for each chapter. As chapters were put together, including tables, illustrations, maps, and text, all of this material was sent back to the originators of the information to make sure the context and information were correct. Once this was completed, the chapters were reviewed by the OSAMP senior management team and signed off by the project manager, and then sent to the TACs for review. The TACs would review the chapters and provide comments. Once the comments from the TACs were integrated into the chapters, these would be sent on to the stakeholders for review and comment. The stakeholder comments would be addressed and a final draft of each chapter was produced and sent to a special subcommittee of the council for review, and then to the full council for rule making. The rule making process consisted of a public notice for formal comment, a workshop and then a full council public hearing. After final council consideration at a public hearing, all chapters were given initial approval, but they were not forwarded to the Secretary of State until all the chapters were completed and an extended comment period was given for the entire document. Finally, there were three public hearings on the entire document and it was formally adopted by the council on October 19, 2010. As is evident from this process, the writing and adoption process gave stakeholders an opportunity to help the writing teams draft the document. The process also gave substantial opportunities for public input.

From the outset it was my intention to make the OSAMP process and document part of Rhode Island's coastal zone program, so that the state could avail itself of the substantial authority given to it through the federal consistency process. The draft chapters were sent to the Coastal Programs Division (CPD) of NOAA, which worked with the writing team and the project manager to review and guide the development of the enforceable policies. Enforceable policies under the CZMA are what gives the plan substance in the OCS. These enforceable polices are called regulatory standards in the OSAMP document. During the NOAA

review of the final draft, additional changes were requested by several federal agencies and NOAA. Additional meetings with stakeholders were held regarding these changes, and several iterations were drafted. An amended document was approved by the council on May 4, 2011 and NOAA formally approved the document as part of the state's coastal management program on May 11, 2011, making the OSAMP the first ocean plan in the nation to be approved by NOAA and become part of a state's approved coastal program. The adoption by NOAA now gives the state a much more robust policy framework for reviewing federal activities and licenses and/or permits. For example, there is a whole new chapter on fisheries that the old Coastal Resources Management Plan framework lacked.

To maximize the federal consistency authority of the OSAMP, it was also designed to push the boundaries of the Geographic Location Description (GLD) process. States have federal consistency "lists" of federal license or permit activities: to review an activity occurring within the coastal zone, the federal license or permit must be listed in the state's coastal management program. If the federal license or permit is not listed and a state wants to review the activity in the coastal zone, the state must seek NOAA Office of Ocean and Coastal Resource Management (OCRM) approval on a case-by-case basis. To review listed federal license or permit activities outside the coastal zone, a state must describe in its coastal management program a geographic location of such activities (Geographic Location Descriptions or GLDs). A GLD must be based on a showing of reasonably foreseeable coastal effects from the listed federal license or permit activity in the proposal. Proposed GLDs must be geographically specific, apply to specific listed federal license or permit activities, and be based on an analysis showing that effects on the state's coastal uses or resources are reasonably foreseeable. Implementing this effects requirement, OCRM has stated that the effects analysis does not have to show proof of coastal effects, but should show a reasonable causal connection; the effects analysis cannot be based on speculation or conclusory statements.[1] This is a very significant

1. OFFICE OF OCEAN AND COASTAL RES. MGMT, STATE JURISDICTION AND FEDERAL WATERS: STATE COASTAL MANAGEMENT PROGRAMS, OCEAN MANAGEMENT AND COASTAL AND MARINE SPATIAL PLANNING 5-6 (2011),

tool for a state, through the federal consistency process, to assert state interest in the OCS. The extent of the area and activities covered in the GLD request are again a first for the nation.

Another factor that contributed to the success of the plan was the research that went into understanding the system and the potential impacts from potential uses on the system. The OSAMP from the very start was intended to be an ecosystem-based plan. Science drove the decision-making process and several new tools specifically designed for the OSAMP were used during the stakeholder process. These tools assisted in increasing transparency and provided a logical path for the stakeholders and the public in the site selection process. The site selection process relies on a series of screening tools, as well as resource inventories and analysis of potential impacts to sensitive resources. The first order of screening is to look at areas that have severe constraints to multiple use or have a dominate use that precludes renewable energy development. Examples of these would be regulated navigation lanes, unexplored ordinance, defense research areas, and others. A second order screening is then preformed to look at factors conducive to renewable energy development. This uses a Geographic Information System (GIS) tool developed by the Ocean Engineering Department of URI called a Technology Development Index (TDI). The TDI is the ratio of the Technical Challenge Index (TCI) to the Power Production Potential (PPP) of the energy extraction device. Based on these two levels of screening, areas are narrowed down for consideration. Data gathering is ongoing for a number of areas including avian, fish habitat, marine mammals, physical oceanographic measurements, acoustics, geophysical and many others to verify site selection. Using this tool, all parties were able to clearly see why certain sites were being considered and others were not.

The planning process also relied heavily on input from both commercial and recreational fishermen to further refine the site selection. Recognition and protection of this very important existing use of marine waters in the OSAMP boundaries was one of the major goals of the plan. In fact, the plan now provides for a new Fishermen's Advisory Board (FAB) which will assist the

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available at http://seagrant.gso.uri.edu/coast/cmsp_material/state_fed-waters.pdf.

council in further site selection, micro siting, habitat evaluation and mitigation planning. Also formed in the plan is a new Habitat Advisory Board (HAB) which has similar duties as the FAB, but is more specifically aimed at habitat evaluation and protection. There is also a requirement in the plan that every six months both boards to meet jointly to discuss issues.

There are also many other notable elements of the plan that will contribute to its long-term success. These include a mandatory public review every two years of the accomplishments, research, and permitting activities conducted by the council through the OSAMP. There is also a mandatory five year review of the plan required. The document, however, will not wait for these reviews to adjust to the changing environment it is in. This is truly meant to be an adaptive management document and, as of the time this essay was written, the plan has already undergone three amendments. Contributing to this adaptive focus are two unique chapters: future uses and climate change. The Future Use chapter considered what new uses we might expect to deal with in the next ten to twenty years in our marine environment and the management implications of those uses. The Climate Change chapter documents the current climate changes we are seeing and the implications of these changes to the natural environment and current users. Both of these chapters are future-oriented and are there to help inform and prepare us for the challenges we will face in the upcoming decades.

The OSAMP also significantly restructured the CRMC's regulatory process in several ways. First, it revamped our old way of looking at projects in the offshore environment. The scale of the proposals and the complexity of the review required for these projects overwhelmed the old process. We now have four stages of review and a new process that is integrated with the federal review process, which will better dovetail with the NEPA process. The integration framework is built off a similar process that is currently done with the ACOE through the state's Programmatic General Permit Review (PGP). The first stage of review is the Site Assessment Plan (SAP) which fits together with the new informational requirements, which are noted as necessary data and information in the plan, so they tie in formally with the federal consistency requirements. This first phase requires interagency approval of all studies and parameters by the

involved regulatory agencies at both the state, federal and tribal level. The second phase is the Construction and Operations Plan (COP). This phase focuses in on siting considerations and construction sequence. No detailed engineering is required in this phase. If the applicant receives approval at the second stage (COP) it then moves to the third stage, or Certification and Verification Agent (CVA) phase. The CVA is a large-scale engineering firm that has expertise in design, construction, marine safety, and operation of complicated, large-scale marine construction projects. The CVA is paid for by the developer but reports to the council. The CVA will review all environmental factors to certify appropriate loading considerations, verify calculations and monitor the construction for the state. This construction monitoring is to certify that structures are constructed in the manner to which they were designed and review all aspects of the construction sequence for marine safety. The CVA will also be used to perform periodic inspections of the structures, for wear and maintenance issues. The CVA process in state waters allows the state to have access to design, construction, safety, and operational assets it would not normally be able to develop or afford. It makes little sense at this time from an efficiency point to recruit, train, and retain staff for this purpose unless the state anticipates hundreds of these structures in its waters. The last stage is the lease phase, during which lease rates are set, bonding is required, and a lease issued for the project.

The second way the OSAMP modified the CRMC's regulatory process is with the addition of Areas of Particular Concern (APCs) and Areas Designated for Preservation (ADPs) in type four waters. These areas are where marine waters have a dominate regulatory program (e.g., navigation lanes), have site characteristics that are unsuitable for major ocean development (e.g., unexplored ordinance), inherent ecological value and high biodiversity (e.g., moraines), or current research shows that major ocean development poses an unacceptable risk (e.g., diving duck habitat). The plan also provides that APCs upon further study may become ADPs, and ADPs can become APCs. This provides an adaptive management framework for integrating the most up-to-date research.

As Rhode Island went forward with the OSAMP planning, the

site selection process quickly demonstrated that the prime utility grade renewable energy sites were in the eastern portion of the OSAMP area. Even though these areas were in the OCS, it was apparent that Massachusetts also had a significant interest in these waters. As a result, the Governors of Rhode Island and Massachusetts entered into discussions and signed an agreement that delineated an area within the eastern portion of the OSAMP area, now known as the Area of Mutual Interest (AMI). The AMI agreement acknowledges that any renewable energy development will result in joint impacts and benefits. The agreement also sets out that the OSAMP is the governing document for the area, thus acting as a joint MSP exercise between the two states. To fully execute this as a joint marine spatial planning (MSP) process, the OSAMP planning team spent the fall and early winter of 2010 holding workshops in Massachusetts and integrating Massachusetts stakeholders' data into the OSAMP. Again this interstate ocean planning is a first for the nation.

The OSAMP, through its extensive data gathering, analysis and research, also demonstrates the benefit of nesting NEPA decisions within an MSP process. The small-scale Block Island marine wind energy project demonstrates this. During the development of the OSAMP, the developer of the Block Island project had entered into a pre-application process with the ACOE regulatory branch. The avian studies that were being conducted as part of the pre-application process by the developer were showing high bird counts in the vicinity of the sites and causing concern within the review process. However, area wide data collected through the OSAMP process was showing high bird counts in many shallow water near-shore habitats. Thus, while the Block Island area was important, it was not unique in its characteristics. As a regulator, I know being able to look at site specific or project specific data, in the context of a larger scale data set, gives certainty to the process and lessens regulatory anxiety. More certainty leads to speedier decisions through the regulatory process. The nesting of the site specific decisions within an MSP exercise is one of the greatly understated benefits of MSP and one reason why the development community should support MSP. Anything that improves certainty and shortens the regulatory decision-making process will lessen the chance of litigation, and turn projects around more quickly. This data will

also improve our monitoring of these projects and help with developing mitigation and adaptive management.

In October 2011, the OSAMP marked its one-year anniversary. It is gaining recognition nationally as well as internationally. The OSAMP has many firsts, which will set an example for other MSP programs to come. While it was a grueling schedule, the OSAMP partners, stakeholders, management team, writing teams, scientists, and students were invigorated by our task. We knew we were doing something that had never been done before, and we wanted to do it well, and make Rhode Island proud.